IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2916 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

NILESHBHAI JASWANTBHAI @ BHIKHABHAI SOLANKI
Versus
COMMISSIONER OF POLICE

Appearance:
MS DR KACHHAVAH for Petitioner No. 1
MR SAMIR DAVE AGP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/05/2002

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu, who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 14/2/2002 passed by the Police Commissioner, Vadodara City and he has been declared as

bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned counsel for the petitioner and also perused the material on record. According to learned counsel for the petitioner, the detaining authority has passed the detention order relying upon three offences registered against the detenu under Prohibition act and also relying upon statements of three witnesses. The learned counsel for the petitioner has has made a statement at bar that against the impugned detention order, the petitioner has made a detailed representation to the detaining authority on 18/2/2002 through advocate which has been received by the detaining authority on 20/2/2002 and replied vide letter dtd.24/2/2002 that the representation of the petitioner has been rejected, but according to the learned counsel for the petitioner, the State Government had approved the detention order on 18/2/2002 i.e. prior to rejection of representation by the detaining authority. She has further argued that once the State Government confirms the detention order, the detaining authority has no power to decide the representation of the petitioner. She tenders the acknowledgment receipt of the postal department, copy of the order of the State Government dtd.18/2/2002 intimating the petitioner that the detention order is confirmed and also the order passed by the detaining authority dtd.24/2/2002 rejecting the representation of the petitioner after the State Government confirmed the detention order. The same is ordered to be taken on record. In support of her arguments, learned counsel for the petitioner has drawn my attention towards the decision of this Court rendered in the case of SALIM POTHIYU REHMANBHAI BELIA VS. DISTRICT MAGISTRATE, DISTRICT MEHTSNA AND OTHERS, 1994(2) GLH (UJ) 11, in which this court relying on Navalshankar Ishwarlal Dave vs. State of Gujarat, AIR 1994 SC 1496 has held as under:-

"The detaining authority is left with no power to consider and to reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in

dispute the that the petitioner's representation made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the District Magistrate, District Mehsana vitiated the continued detention of the petitioner."

4. From the above discussion, it is an admitted fact the State Government confirmed the detention order of the petitioner on 18/2/2002 and thereafter the detaining authority has rejected the representation of the petitioner on 24/2/2002 i.e. after the confirmation of the detention order. In view of the aforesaid judgement relied upon by the petitioner, the detention order is illegal and cannot sustain in the eye of law. Hence the petition is required to be allowed.

5. The petition is allowed. The impugned order of detention dated 14/2/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Nileshbhai Jaswantbhai alias Bhikhabhai Solanki is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)
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